

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1325

CA 14-00950

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

IN THE MATTER OF THE ESTATE OF PAUL S.
VIRGINIA, DECEASED.

MEMORANDUM AND ORDER

WESTERN NEW YORK CHECK SERVICES LLC,
PETITIONER-APPELLANT,
AND PAULETTE GORDON, PETITIONER;

THE ESTATE OF PAUL S. VIRGINIA, THOMAS
VIRGINIA, JR., AND MARIANA G. VIRGINIA,
RESPONDENTS-RESPONDENTS.

HARTER SECREST & EMERY LLP, BUFFALO (RAYMOND L. FINK OF COUNSEL), FOR
PETITIONER-APPELLANT.

JASON R. DIPASQUALE, BUFFALO, FOR RESPONDENTS-RESPONDENTS.

Appeal from an order and decree of the Surrogate's Court, Erie County (Barbara Howe, S.), entered March 4, 2014. The order and decree dismissed without prejudice the petition to, inter alia, transfer to petitioners the membership interest of decedent in petitioner Western New York Check Services LLC.

It is hereby ORDERED that the order and decree so appealed from is unanimously affirmed without costs.

Memorandum: Petitioners commenced this proceeding seeking, inter alia, an order pursuant to SCPA 2105 directing respondents to transfer to petitioners decedent's membership interest in petitioner Western New York Check Services LLC. Surrogate's Court properly dismissed the petition on the ground that petitioners failed to demonstrate that they are "unquestionably and unconditionally entitled to [the] immediate" transfer of decedent's membership interest (*Matter of Mittleman*, 35 Misc 2d 848, 848; see *Matter of Yaremo*, 2013 NY Slip Op 30717[U], *3 [Sur Ct, Nassau County 2013]). Inasmuch as petitioners are not entitled to relief under SCPA 2105, there was no need for the Surrogate to consider the contentions concerning the requirements of Banking Law article 9-A.

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court